

**KENTUCKY PERSONNEL BOARD  
MINUTES OF SEPTEMBER 14, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on September 14, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Tina Goodmann, Vice-Chairman  
Betty Gibson, Member  
Lisa T. Hendricks, Member  
Rosemary F. Center, Member  
Jackson M. Andrews, Member  
Robert B. Frazer, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 10, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Hendricks moved to approve the minutes as submitted, Ms. Center seconded, and the motion carried 6-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Board Members should have a copy of the draft Fiscal Year 2007 Annual Report. This report shows a reduction of appeals pending due to settlements, with the assistance of the Kentucky Employees Mediation Program (KEMP), and the efforts of General Counsel Andy Crocker. If the Board is satisfied with this report, it is ready for approval. Chairman Higgins asked if there were any questions. There being no questions from the Board members, Chairman Higgins stated he would entertain a motion to approve the report.

Mr. Andrews moved to approve the Fiscal Year 2007 Annual Report. Ms. Hendricks seconded and the motion carried 6-0.

#### 4. PETITIONED POSITIONS

- A. Kentucky Board of Architects – Special Assistant  
T. Rexford Cecil, Executive Director

Mr. Cecil advised that he needed to fill a Special Assistant position within the Kentucky Board of Architects. Mr. Cecil stated that a “CAP” increase was approved in four days and the Governor’s office was supportive. The Special Assistant will be responsible for investigating complaints of citizens violating the law. No work will be assigned unless the Board of Architects approves it first. The Special Assistant will be on contract at \$50 an hour; however, will not exceed 100 hours per month. The Board of Architects is self-supporting and does not receive tax dollars. Chairman Higgins asked if this position could be filled through a merit position. Mr. Cecil advised that he could not pay a merit employee \$50 an hour. He is also looking for a person who is greatly experienced and can work a flexible schedule.

#### 5. ORAL ARGUMENTS

- A. Greg Ison v. Department of Fish and Wildlife Resources

Present were the Hon. Morgain Sprague, counsel for the Appellee, who had requested oral arguments; and the Hon. Paul Fauri, counsel for the Appellant. The parties answered questions from the Board.

Chairman Higgins announced that the remaining oral arguments would be delayed pending the Personnel Cabinet’s Report.

#### 6. PERSONNEL CABINET’S REPORT

Secretary Brian Crall, Personnel Cabinet, apologized to the Board members for being late. He advised the Board of the following:

a. Secretary Crall commended the Personnel Board staff on how a meeting was handled and facilitated by Executive Director Sipek. He also advised that the Personnel Cabinet moved to the State Office Building, located at 501 High Street, and is easier to find.

b. Mr. Tom Stephens handed out a packet to the Board Members containing a draft of 101 KAR 2:220, Educational Assistance Program, which the Governmental Services Center (GSC) will be responsible for administering and monitoring. Mr. Stephens advised that GSC will ensure accountability. Mr. Stephens introduced Dr. Penny Armstrong who is over the GSC program. Mr. Stephens advised that the Board can look at the draft and provide input at the next Board meeting. Dr. Penny Armstrong will be available to answer any questions at the next meeting.

c. The Personnel Cabinet will submit changes to 101 KAR 1:325, Probationary Periods. Information will be gathered by the Cabinet and they hope to provide it at the next Board meeting. Also enclosed in the packet was an amendment to 101 KAR 2:210, 2008 Summary Plan Descriptions, which was submitted for mandatory review.

d. 2008 Employee Insurance – Secretary Crall stated that there are no changes in benefits; however, there is a 5.8% premium increase.

e. Secretary Crall stated that he is vigilantly looking at personnel actions and ensuring that there is no “burrowing” of non-merit employees migrating into merit employee positions. Further, findings of investigations will be forthcoming.

f. Finally, Secretary Crall stated that it was his personal privilege to report facts of this administration as it pertains to hiring practices. The Board Members were provided fact sheets gathered from the Personnel Board Annual Reports for the last 24 years. Secretary Crall stated that there are key analysis points to determine whether administrations are doing hiring practices correctly. These are: the number of employee appeals, the number of appeals sustained and Board ordered reinstatements. Further, Secretary Crall does not remember any past administration going through the type of investigation and analysis of hiring practices that this administration has. Secretary Crall asked his staff to look for any and every employment action that could manipulate the 18A system.

An analysis shows that of the 30,757 employment actions that have taken place within this administration the last three and a half years, only fifteen actions were found questionable. If this number was doubled “for the sake of argument,” only 0.9975 percent of the employment actions are questionable. Therefore, the percentage of actions not questioned would be 99.9125 percent. Secretary Crall wanted to state on the record that this is not an attempt to discount or minimize inappropriate actions, but to publicly announce that this administration has done a better job than has been portrayed by the press. Furthermore, Secretary Crall wanted to point out that there were many sides of the story and many facts to be considered. Mr. Andrews had a question concerning why numbers for the Wilkinson and Collins Administration were not provided. Secretary Crall advised that information was not available; however, the numbers that were available came directly from the Personnel Board’s Annual Reports. Mr. Crocker advised that the Annual Reports only go back to the early 1980s when the Board was fully staffed, either in 1982 or 1983. No further questions were asked of Secretary Crall. Thereafter, Chairman Higgins resumed the oral arguments.

## 7. ORAL ARGUMENTS (continued)

### B. Kent Jones v. Education Cabinet

Present were the Hon. Sue Simon, counsel for the Appellee, who had requested oral arguments; and the Appellant, Kent Jones, *pro se*. The parties answered questions from the Board.

C. John McCann v. Transportation Cabinet

Present were the Hon. Paul Fauri, counsel for the Appellant, who had requested oral arguments; and the Hon. Edwin Logan, counsel for the Appellee. The parties answered questions from the Board.

D. Anita Johnson Stotts v. Justice and Public Safety Cabinet

Present were the Hon. Melanie Cook, counsel for the Appellant, who had requested oral arguments; and the Hon. Angela Cordery, counsel for the Appellee. The parties answered questions from the Board.

8. **MOTIONS**

A. Lowell Workman v. Cabinet for Health and Family Services

- Status Report by Cabinet
- Response by Workman
- Additional Information provided by Workman
- Additional response by Cabinet

Present were Mr. Lowell Workman, *pro se*, and the Hon. Amber Arnett, counsel for Appellee, with agency representatives Ms. Trinta Cox, Ms. Mae O'Connell, and Mr. Guy Delius. The parties answered questions from the Board.

B. Priscilla Miller v. Justice and Public Safety Cabinet

- Motion to Enforce Board's Order
- Appellee's Response to Personnel Board Notice

No oral argument was presented on this motion.

9. **CLOSED SESSION**

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (12:30 p.m.)

Ms. Center moved to return to open session, Ms. Goodmann seconded, and the motion carried 6-0. (2:58 p.m.)

10. **PETITIONED POSITIONS**

Special Assistant - Kentucky Board of Architects

Ms. Goodmann moved to approve the petition of the Kentucky Board of Architects for a Special Assistant. Ms. Center seconded and the motion carried 6-0.

11. **PERSONNEL BOARD HIRING REQUEST**

Part-Time Staff Attorney – Personnel Board

Mr. Frazer moved to approve the request to establish a part-time Staff Attorney position in the Personnel Board. Ms. Gibson seconded and the motion carried 6-0.

12. **MOTIONS**

- A. Lowell Workman v. Cabinet for Health and Family Services
  - Status Report by Cabinet
  - Response by Workman
  - Additional Information provided by Workman
  - Additional response by Cabinet

Mr. Frazer moved to enforce the Board's December 19, 2006 order, by filing either a contempt motion or declaratory rights motion with the Franklin Circuit Court. Mr. Andrews seconded and the motion carried 6-0.

- B. Priscilla Miller v. Justice and Public Safety Cabinet
  - Motion to Enforce Board's Order
  - Appellee's Response to Personnel Board Notice

Ms. Hendricks moved to defer this matter to the next meeting of the Board. Ms. Goodmann seconded 6-0.

### 13. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Greg Ison v. Department of Fish and Wildlife Resources

Mr. Frazer moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the recommended order sustaining the appeal. Mr. Andrews seconded and the motion carried 2-1, with Ms. Hendricks opposing and with Ms. Gibson, Ms. Goodmann, and Ms. Center abstaining.

B. Kent Jones v. Education Cabinet

Ms. Gibson moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the recommended order sustaining the appeal. Mr. Andrews seconded and the motion carried 6-0.

C. John McCann v. Transportation Cabinet

Mr. Frazer moved to defer this matter to the next meeting of the Board. Ms. Hendricks seconded and the motion carried 5-0, with Ms. Goodman abstaining.

D. Anita Johnson Stotts v. Justice and Public Safety Cabinet

Ms. Center moved to defer this matter to the next meeting of the Board. Mr. Andrews seconded and the motion carried 5-1, with Mr. Frazer opposing.

E. Donna Ader v. Justice and Public Safety Cabinet

Ms. Goodmann moved to accept the recommended order sustaining the appeal as to the evaluation and dismissing the appeal as to the involuntary transfer and demotion. Ms. Center seconded and the motion carried 6-0.

F. Grant Austin v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

G. Pamela Buckley v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

H. Kandie Harris v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

I. Ronald Logan v. Cabinet for Health and Family Services

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

J. Wayne Woolums v. Cabinet for Health and Family Services

Mr. Andrews moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 6-0.

K. Renee Yarrington v. Cabinet for Health and Family Services

Mr. Andrews moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- L. James Jackson, Jr. v. Education Cabinet
- M. James Morgan v. Personnel Cabinet
- N. Darren Morgen v. Cabinet for Health and Family Services
- O. Jennifer Pruitt v. Cabinet for Health and Family Services (2 appeals)

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Gibson seconded and the motion carried 6-0.

14. **WITHDRAWALS**

Ms. Hendricks moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Center seconded and the motion carried 6-0.

- A. Stephanie Antle v. Personnel Cabinet
- B. Robert Carter v. Personnel Cabinet

- C. Mark Crawford v. Transportation Cabinet
- D. Clifford Dykes v. Department of Veterans Affairs (2 appeals)
- E. Emma Lou Hartlage v. Board of Embalmers and Funeral Directors
- F. Britt Ingram v. Personnel Cabinet
- G. Piper Lewis v. Personnel Cabinet
- H. Royal Postma v. Personnel Cabinet
- I. Stuart Stephens, Jr. v. Personnel Cabinet
- J. Terry Tipton v. Personnel Cabinet
- K. James Travis v. Environmental and Public Protection Cabinet
- L. Ronald Voils v. Environmental and Public Protection Cabinet
- M. Charles T. Allen v. Transportation Cabinet
- N. Shawn Keathley v. Transportation Cabinet and Personnel Cabinet
- O. Todd Lambert v. Justice and Public Safety Cabinet
- P. William F. Prevatt, Sr. v. Personnel Cabinet

## 15. SETTLEMENTS

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Andrews seconded and the motion carried 6-0.

- A. Cindy Branstetter v. Cabinet for Health and Family Services
- B. Martina Gregory v. Justice and Public Safety Cabinet
- C. Thaddeous Price v. Department of Agriculture
- D. Teresa Shanklin v. Justice and Public Safety Cabinet
- E. Bruce Vaughn v. Education Cabinet
- F. Shirleen Wilson v. Cabinet for Health and Family Services
- G. Gerald Wuetcher v. Public Service Commission

## 16. OTHER

### Investigations:

- Powell County – Aukerman - Mr. Sipek advised that the investigation was not complete. A witness is scheduled for next Tuesday. Mr. Sipek hopes to provide a report to the Board at the October meeting.
- Hiring of Mike Duncan – A meeting was held on August 23, 2007. An evidentiary hearing is scheduled for October 29, 30, and 31. Thereafter, Mr. Sipek advised he will have a report for the Board.
- Doug Doerting Petition - A meeting was held on August 28, 2007. Five issues were identified. A pre-hearing conference is scheduled for September 24, 2007. The Transportation Cabinet has requested to take the statement of Mr. Doerting under oath. The Attorney General's office and the Hon. Paul Fauri have filed briefs. Mr. Sipek advised that he was waiting on responses from the Transportation Cabinet and the Governor's Office of Local Development. Mr. Sipek advised that he hoped to

present a recommended order presenting the issue to the Board at the October Board meeting.

- Mr. Sipek advised that there are three other active investigations, but not much is going on at this time, hence the request for a part-time staff attorney position.

Chairman Higgins asked if there was any other business. Mr. Sipek advised that the Board members need to decide a date to review legislation, possibly in November. Ms. Center stated she will be out of the country and will not be available for the November Board meeting. Chairman Higgins asked the Board Members to be prepared to provide available dates at the October meeting.

There being no further business, Ms. Gibson moved to adjourn, Ms. Hendricks seconded, and the motion carried 6-0. (3:20 p.m.)

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Greg Higgins, Chairman

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Tina Goodmann, Vice-Chairman

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Betty Gibson, Member

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Lisa Hendricks, Member

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Rosemary F. Center, Member

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Jackson M. Andrews, Member

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Robert B. Frazer, Member